

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1192 of 1984

Date of decision: 25-4-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHARATKUMAR PARSHOTTAMDAS          MINOR

Versus

SHANKERBHAI PRABHATBHAI  
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Appearance:

MR AJ PATEL for Petitioners  
MR RN SHAH for Respondent No. 1  
None present for Respondent No. 2, 4  
DELETED for Respondent No. 3  
  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/97

#### ORAL JUDGEMENT

This special civil application arises out of the proceedings under section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948, initiated by the Mamlatdar & Agricultural Lands Tribunal ("A.L.T."), Borsad, on the basis of the application made by the respondents on 19th September, 1978. The dispute pertains to the land bearing Survey No.476/3, admeasuring 35 gunthas situated in the sim of village Virsad, Taluka Borsad, District: Kheda. The Mamlatdar & A.L.T., by his order dated 24th August, 1981, accepted the application and directed the petitioners to hand over possession of the said disputed land to the respondents. The matter was taken up by the petitioners in appeal before the Deputy Collector, Petlad, who, vide his order dated 18th January, 1982 dismissed the same. The matter was then carried by the petitioners in revision before the Gujarat Revenue Tribunal, but the Tribunal also dismissed the revision application under order dated 19th September, 1983. Hence the present petition.

2. The only contention raised by the learned counsel for the petitioners is that the application under section 32(1B) of the Act by the respondents was not maintainable, as it is not the case where the tenant has been dispossessed from the land by the landlord otherwise than in accordance with the provisions of the Act. This is a case where the tenant voluntarily surrendered possession of the land and as such the case does not fall under the provisions of section 32(1G) of the Act. In support of this contention learned counsel for the petitioner placed reliance on the decision of the apex court in the case of Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal (since deceased), reported in 36(1) GLR 344. On the other hand counsel for the respondent contended that this point was not raised by the petitioners before the Gujarat Revenue Tribunal and as such this point is not open to him. It has next been contended that this aspect has been considered by the Mamlatdar & A.L.T. and as such it is finding of fact, which may not be interfered with by this Court sitting under Article 227 of the Constitution of India.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The statements of Shankarbhai Prabhatbhai Chauhan recorded on 13th July, 1961 in the proceedings initiated under section 32G of the Act has been filed by the petitioner on the record of the special civil

application. Further, statement of Shankrbhai Prabhatbhai was referred by the Mamlatdar in his order, but the statements of the aforesaid witness appears to have been not correctly read by the said authority. I consider it to be a fit case where the matter has to be remanded back to the authorities for deciding the matter afresh after considering the statements of Shankrbhai Prabhatbhai. I do not consider it to be advisable to give any finding on the merits, but the matter is required to be considered with reference to the question whether it is a case of dispossession of the tenant otherwise than in accordance with the provisions of the Act or it is a case of voluntary surrender of possession of the land to the landlord. It is a matter of appreciation of evidence and it has to be done by the Mamlatdar & A.L.T. In view of the aforesaid decision of the apex court, reliance on which has been placed by the counsel for the petitioners, in case it is a voluntary surrender of possession by the tenant to the landlord, protection under section 32(1B) of the Act may not be available to the tenant. This larger issue was not considered by the authorities below. Both the counsel for the parties are agreeable to the matter being remanded back to the Mamlatdar & A.L.T.

4. In the result this special civil application succeeds in part. The order of all the three authorities below, namely, the Mamlatdar & A.L.T., the Deputy Collector and the Gujarat Revenue Tribunal are quashed and set aside. The matter is remanded back to the Mamlatdar & A.L.T. with direction to restore the case to its original number and to decide the same afresh in accordance with law, keeping in view the ratio of the decision rendered by the apex court in the case of Dhondiram Tatoba Kadam (supra), on the basis of the material produced by the parties on record. It shall not be open to either of the parties to amend the pleadings or to produce any other additional evidence. Consideration of the matter by the Mamlatdar & A.L.T. shall be on the basis of the pleadings of the parties as well as the evidence produced by the parties on record. Since it is an old matter the Mamlatdar & A.L.T. shall decide the same within a period of six months from the date of receipt of certified copy of this judgment. Rule is made absolute in the aforesaid terms. No order as to costs.

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